

TAYLOR BASIN PARTNERSHIP ET AL.

IBLA 85-946 et al.

Decided August 27, 1990

Appeals from decisions by the Colorado and Wyoming State Offices, Bureau of Land Management, rejecting or holding for rejection applications for oil and gas leases for failure to disclose another party-in-interest or for violation of the prohibition against multiple filing. C 38084 et al.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Sole Party in Interest

A simultaneous oil and gas lease application is properly ejected when it does not disclose the identity of another person that holds an interest. An application is also properly rejected as a prohibited multiple filing when a person has an interest in more than one application filed for the same parcel.

2. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Sole Party in Interest--Words and Phrases

"Interest in an oil and gas lease offer." When an applicant for an oil and gas lease has executed a promissory note entitling the holder to 60 percent of the proceeds from a Federal oil and gas lease, the holder of the note has an interest in the oil and gas lease, as defined by 43 CFR 3100.0-5(b).

APPEARANCES: William E. Stewart, Esq., Kewanee, Illinois, for the Great Falls Basin Partnership; Charles E. Weller, Esq., Reno, Nevada, for the Taylor Basin Partnership and all other appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Taylor Basin Partnership's simultaneous oil and gas lease application for Parcel CO-268 was selected with first priority in the July 1983 selection. The application form stated that the Federal Lease Filing Corporation (FLFC) had served as Taylor Basin Partnership's filing service. The application form section providing for the "Full Name of Other Parties in Interest (if Applicable)" was left blank.

On September 4, 1985, the Colorado State Office, Bureau of Land Management, rejected Taylor Basin Partnership's application for "failure to disclose another party-in-interest as required by 43 CFR 3112.2-3." The decision stated that "where Federal Lease Filing Corporation made a filing for [the partnership], as was done in this case also, there was an undisclosed interest of another party-in-interest," citing Joshua Basin Partnership, 87 IBLA 179 (1985), Petition for Reconsideration Denied, Order of August 13, 1985. In the other appeals consolidated for decision with this one (see Appendix A), the Bureau of Land Management (BLM) either rejected applications or held them for rejection on this basis or on the basis that the partnership agreement between the FLFC and the partnership violated the prohibition against multiple filing contained in 43 CFR 3112.2-1(f) or on both bases.

The appellants requested that we stay consideration of these appeals pending the outcome of judicial review of the Joshua Basin decision.

The United States District Court for the District of Wyoming, by order dated October 10, 1986, held the Board "acted arbitrarily by overlooking the waivers [of the FLFC's interest] contained in the Taylor Basin and Shasta Basin service agreements," and reversed and remanded the decision with respect to those partnerships. Joshua Basin Partnership v. United States Department of the Interior, No. C85-0538-B, Order of October 10, 1986 (D. Wyo.), at 9-10.

On appeal to the United States Court of Appeals for the Tenth Circuit, the Government argued that "the waiver provisions in [these] service agreements did not effectively disclaim FLFSC's interest in the lease applications." 1/ Joshua Basin Partnership v. Department of the Interior, Nos. 86-2816 and 86-2817, Order and Judgment at 5 (10th Cir., Dec. 20, 1989). The Court agreed:

FLFSC has waived only its "priority interest" and "any community of interest." These terms are vague and not defined. In the absence of any evidence that FLFSC waived its entire interest in lease proceeds, the district court's decision that the agency acted arbitrarily must be reversed as to Taylor Basin and Shasta Basin.

Id.

We terminated our suspension of consideration of these appeals on January 8, 1990, and provided appellants an opportunity to file statements of reasons (SOR) for their appeals. We re-instituted the suspension because appellants responded that they intended to file a petition for certiorari.

1/ FLFSC is a "wholly owned subsidiary and collection service for the Federal Lease Filing Corporation (FLFC)." Id. at 3. The Court noted that "FLFSC has since commenced bankruptcy proceedings in Texas. In re Federal Lease Filing Serv. Corp., No. 384-31348 (Bankr. N.D. Tex.)." Id. at 3 n. 2.

The United States Supreme Court denied a petition for certiorari on April 16, 1990. On May 21, 1990, we again terminated our suspension of consideration and provided appellants another opportunity to file SOR's. Appellants have stated they have nothing to add to their response to our order of January 8, and the Office of the Solicitor has not filed an Answer, so the appeals are now ripe for decision.

In their response to our January 8 order, appellants (other than the Great Falls Basin Partnership) also stated that they each "had another agreement with Federal Lease Filing Corporation which was not introduced as evidence by [their] previous counsel. This document * * * contains two detailed waivers which do not have the problems of vagueness discussed by the Court of Appeals." Copies of these documents were attached. 2/

We are puzzled why these documents were so recently filed with us. After the District Court's decision in 1986, "[i]n order to aid the [Board] in its review of the appeals pending before it," counsel for appellants filed the service agreements between FLFC and several of these appellants and stated he would provide what he believed were identical agreements between other appellants and FLFC. These service agreements were the ones considered by the District Court, and were signed in 1982. All but one of the documents counsel submitted in January 1990 were also signed in 1982.

If there were no indication in the record that these documents were submitted to BLM, we would normally not consider them. We have stated several times that it is not our function to consider matters in the first instance. See, e.g., ANR Production Co., 110 IBLA 127, 128 (1989), James C. Mackey, 104 IBLA 393, 394 (1988), Henry A. Alker, 62 IBLA 211, 212 (1982), California Association of Four Wheel Drive Clubs, 30 IBLA 383, 385 (1977). Given the delay in adjudicating the issue in these appeals, however, and because the documents were sent to BLM by several of the appellants in response to BLM's requests for information, we think no useful purpose would be served in remanding the appeals to BLM at this stage. See Beard Oil Co., 97 IBLA 66, 68 (1987); Robert C. LeFaivre, 95 IBLA 26, 28 (1986).

In our view, the documents are more properly characterized as declarations or statements, not agreements. More importantly, however, rather than waive any interest that may be found to exist, they simply assert that no interests exist. On the first page, entitled "Authorization of Agency and Disclosure of Interests," a general partner of each partnership states, in paragraph 3, after authorizing FLFC to file applications for the partnership:

There is no agreement or understanding between the Partnership or any of its partners and [FLFC], or the Partnership or any of its

2/ The document was not submitted for the Adobe Basin Partnership, IBLA 86-613. Counsel for the Great Falls Basin Partnership did not offer this document.

partners and any other person, either oral or written, by which [FLFC] or such other person has received or is to receive any interest in any of the Partnership's applications to lease, or any lease when issued, including, but not limited to, any royalty interest, or any interest in any operating agreement under the lease.

This statement is signed only by the partner, and is dated September 22, 1982.

On the second page, below the signature of the partner, appears a "Separate Statement of Federal Lease Filing Corporation":

[FLFC] states that there is no agreement or understanding, either oral or written, between itself and any of the persons whose names appear upon the accompanying statements pursuant to 43 CFR 3102.6, or any other person, by which [FLFC] or such other person has received or is to receive any interest in any lease issued, including any royalty interest, or any interest in any operating agreement under the lease.

This statement is signed only by the president of FLFC and is not dated.

This is not language of waiver. Waiver has been found, in this context, when the language stated "I do hereby waive and renounce any exclusive agency which I may have by reason of said service agreements with said offerors from and after this date. * * * I do hereby further state and aver * * * that this disclaimer is being made in the event that a determination is made that the exclusive agency vests in me an interest in the lease or offer to lease which may disqualify the offeror." See Lowey v. Watt, 684 F.2d 957, 962 (D.C. Cir. 1982); cf. Cover v. Watt, 720 F.2d 626 (10th Cir. 1983). These documents do not say FLFC immediately waives any interest the Department may determine FLFC had. These documents state only that there is no agreement that FLFC or any other person is to receive any interest.

[1, 2] In point of fact, however, the service agreements in these appeals contain the language that we held in Joshua Basin Partnership, supra, does constitute an interest, namely, that "[p]rincipal on the [recourse Promissory Note] shall be payable from 60% of Partnership revenues until paid in full." 87 IBLA at 183. Because the applications did not indicate any other parties in interest, BLM properly rejected them. Joshua Basin Partnership, supra at 182. Because more than one partnership applied for a parcel and because FLFC had an interest in more than one application, the prohibition against multiple filings, 43 CFR 3112.2-1(f), was violated. Id. at 189.

The service agreements also contain the following language: "FLFSC, its affiliates and O&GLPMC [Oil and Gas Lease Partnership Management Corporation, Managing Agent of the Partnership] shall have no priority interest of any kind in any lease won by the Partnership hereunder or the

profits arising therefrom; any community of interest is hereby disclaimed by the parties hereto." This language is not effective to waive FLFC's interest in its share of the proceeds from the lease. Joshua Basin Partnership, *supra* at 189. Nor, as noted in the Order of August 13, 1985, denying the Petition for Reconsideration of Joshua Basin, does the fact that the partnership agreement contained language providing that any of its provisions found in violation of Federal law is void ab initio erase the effect of the terms of the service agreement between the partnerships and FLFC. 3/

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Will A. Irwin
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

3/ "We note first that it was the service agreements between Federal Lease Filing Corporation (FLFC) and the partnerships, not the partnership agreements, which created an interest in FLFC. The fact that the partnership agreements provided for invalidating certain provisions of that document in no way affects the terms of the service agreement between the partnership and FLFC." (Order of Aug. 13, 1985, Petition for Reconsideration Denied, IBLA 84-100 et al. (Joshua Basin Partnership) at 2). Moreover, as the Board pointed out in Joshua Basin Partnership, *supra* at 182, "the regulations do not prohibit interests from being created." What they do prohibit is the failure to disclose such interests or the submission of multiple filings.

APPENDIX A

<u>Appellant</u>	<u>Serial No.</u>	<u>IBLA No.</u>
Taylor Basin Partnership	C 38034	85-946
Great Falls Basin Partnership	W 84460	86-212
Golden West Basin Partnership	W 84485 86-418	86-213
Paradox Basin Partnership	W 83167	86-409
Big Horn Basin Partnership	W 83271	86-411
Aztec Basin Partnership	W 83290	86-412
Joshua Basin Partnership	W 83303	86-413
Paradox Basin Partnership	W 83720	86-414
Cactus Basin Partnership	W 83765	86-415
Cloud-Sweetwater Basin Joint Venture	W 83786	86-416
Georgia Basin Partnership	W 83877	86-417
Blackfoot Basin Partnership	W 85267	86-419
Georgia Basin Partnership	W 85820	86-420
Cloud-Sweetwater Basin Joint Venture	W 87078	86-422
Delta Basin Partnership	C 37660	86-611
Raton Basin Partnership	C 38016	86-612
Adobe Basin Partnership	C 38088	86-613
Cloud-Sweetwater Basin Joint Venture	C 39088	86-615